



# City of Carmel

## **Carmel/Clay Board of Zoning Appeals June 24, 2002**

The regularly scheduled meeting was held at 7:00 PM in the Council Chambers of Carmel City Hall on June 24, 2002. Those members in attendance: Michael Mohr, Pat Rice, and Leo Dierckman, thereby establishing a quorum. Earlene Plavchak and Charles Weinkauff joined the Board at 8:10 PM.

Department of Community Services Staff in attendance: Director Michael Hollibaugh, Laurence Lillig, Adrienne Keeling, Building Commissioner Jeff Kendall. John Molitor, Legal Counsel was also present

John Molitor reported a ruling was received from Judge Proffitt in the case of the dismissal of the Sprint appeal on the Director's determination on subdivision requirement. The Court has ruled that the Board should have allowed that appeal to be heard and that trial rules should have been applied. The counsel for Sprint is requesting that the Board put the subdivision issue back on the agenda for next month.

Laurence Lillig noted the following items have been tabled: Items 1-4j Lakes at Hazel Dell, (V-18-02 through V-21-02) to the July 22, 2002, agenda; Items 5-17j Carmax Auto Superstores (V-54-02 through V-66-02) pending ADLS approval; 41j Burton Accessory Building (V-92-02) to the July 22, 2002, agenda; and 42-45j Meridian Mark III (V-93-02 through V-96-02) pending ADLS approval.

### **J. Public Hearing:**

#### **1-2j. *Tabled to the July 22, 2002, agenda at Petitioner's request.***

##### **Lakes at Hazel Dell, Section 1, Common Area 4a (V-18-02; V-19-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

V-18-02	§25.7.02-1(b): Number & Type	2 Subdivision Signs
V-19-02	§25.7.02-1(b): Number & Type	unmatched Subdivision Signs

The site is located on the southwest corner of West Dellfield Boulevard and Hazel Dell Parkway.

The site is zoned S-1/Residence - Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Drees Homes.

#### **3-4j. *Tabled to the July 22, 2002, agenda at Petitioner's request.***

##### **Lakes at Hazel Dell, Section 1, Common Area 6 (V-20-02; V-21-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

V-20-02	§25.7.02-1(b): Number & Type	2 Subdivision Signs
V-21-02	§25.7.02-1(b): Number & Type	unmatched Subdivision Signs

The site is located on the northeast corner of East Dellfield Boulevard and Hazel Dell Parkway.

The site is zoned S-1/Residence - Low Density.

Filed by Joseph M. Scimia of Baker & Daniels for Drees Homes.

5-17j. ***Tabled pending Plan Commission approval of ADLS.***

**Carmax Auto Superstores (V-54-02; V-55-02; V-56-02; V-57-02; V-58-02; V-59-02; V-60-02; V-61-02; V-62-02; V-63-02; V-64-02; V-65-02; V-66-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

V-54-02	§14.6: Landscaping Requirements	15' north and east bufferyards
V-55-02	§25.7.01-2	8' traffic directional sign E1
V-56-02	§25.7.01-2	4-square-foot traffic directional sign E1
V-57-02	§25.7.01-2	8' traffic directional sign E2
V-58-02	§25.7.01-2	4-square-foot traffic directional sign E2
V-59-02	§25.7.02-8(b)(i) five (5)	identification signs (A, B, B1, C, D)
V-60-02	§25.7.02-8(b)(ii)	three (3) id signs oriented east (B, C, D)
V-61-02	§25.7.02-8(c)	193-square-foot wall identification sign A
V-62-02	§25.7.02-8(c)	193-square-foot wall identification sign C
V-63-02	§25.7.02-8(c)	78.33-square-foot ground identification sign B
V-64-02	§25.7.02-8(c)	78.33-square-foot ground identification sign B1
V-65-02	§25.7.02-8(d)	8' ground identification sign B
V-66-02	§25.7.02-8(d)	12' 3½" ground identification sign B1

The site is located on the northwest corner of East 96<sup>th</sup> Street and Gray Road. The site is zoned B-3/Business.

Filed by E. Davis Coots of Coots Henke & Wheeler for Carmax Auto Superstores, Inc.

18-38j. **St. Vincent's Carmel Hospital (V-67-02; V-68-02; V-69-02; V-70-02; V-71-02; V-72-02; V-73-02; V-74-02; V-75-02; V-76-02; V-77-02; V-78-02; V-79-02; V-80-02; V-81-02; V-82-02; V-83-02; V-84-02; V-85-02; V-86-02; V-87-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

V-67-02	§25.7.01-2	39-square-foot "EMERGENCY" TDS (20-1)
V-68-02	§25.7.01-2	11.07-square-foot "Ambulance Exit Only" TDS (20-4)
V-69-02	§25.7.01-2	11.07-square-foot "Ambulance Entrance" TDS (20-5)
V-70-02	§25.7.01-2	14.5-square-foot "Main Entrance" TDS (25-1)
V-71-02	§25.7.01-2	10.94-square-foot "Emergency" TDS (25-2)
V-72-02	§25.7.01-2	forty-one (41) 4-square-foot section TDS (30-#)
V-73-02	§25.7.01-2	ten (10) 17.25-square-foot director TDS (32-a)
V-74-02	§25.7.01-2	ten (10) 5' 2" director TDS (32-a)
V-75-02	§25.7.01-2	ten (10) 14.06-square-foot director TDS (32-b)
V-76-02	§25.7.01-2	ten (10) 4'6" director TDS (32-b)
V-77-02	§25.7.01-2	five (5) 4.75-square-foot bldg entrance id # TDS (22-#)
V-78-02	§25.7.02-5(b)(i)	eight (8) institutional signs
V-79-02	§25.7.02-5(c)(i)	70.06-square-foot institutional sign (10-1)
V-80-02	§25.7.02-5(c)(i)	70.06-square-foot institutional sign (11-1)
V-81-02	§25.7.02-5(c)(i)	77.7-square-foot institutional sign (12-1)
V-82-02	§25.7.02-5(c)(i)	77.7-square-foot institutional sign (12-2)
V-83-02	§25.7.02-5(c)(i)	144-square-foot institutional sign (20-2)
V-84-02	§25.7.02-5(d)	5' 4" institutional sign (10-1)
V-85-02	§25.7.02-5(d)	5' 4" institutional sign (11-1)
V-86-02	§25.7.02-5(d)	8' 9" institutional sign (12-1)
V-87-02	§25.7.02-5(d)	8' 9" institutional sign (12-2)

The site is located at 13500 North Meridian Street. The site is zoned B-6/Business within the US 31/Meridian Street Overlay Zone.

Filed by Becky R. Feigh of BSA Design for St Vincent Hospital & Health Care Center, Inc.

Present for Petitioner: Becky Feigh, BSA Design, 9365 Counselor's Row, Indianapolis and Charles Jeffers of St. Vincent's Carmel Hospital. These are variances for signs needed for a hospital facility. Final ADLS approval was received from the Plan Commission. These signs are larger and taller for more information and a new numerical system to help simplify the ground and directional signs throughout the facility.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared and the public hearing was closed.

Department Recommendation: Favorable consideration. Laurence Lillig stated this is a unique facility in that its permeability as a structure makes the number of Directional Signs located on site a necessity. The variety of facilities located within the structure itself makes accurate external identification of the appropriate entrance for each necessary. He also recommended suspending the rules of procedure and vote on these items in two blocks: V-67-02 through V-77-02 which are all for traffic directional signs and V-78-02 through V-87-02 which are all for institutional signs.

Mrs. Rice moved to suspend the rules. The motion was seconded by Leo Dierckman and **APPROVED 3-0.**

Mrs. Rice moved to approve **St. Vincent's Carmel Hospital (V-67-02 through V-77-02)**. The motion was seconded by Mr. Dierckman and **APPROVED 3-0.**

Mr. Dierckman moved to approve **St. Vincent's Carmel Hospital (V-78-02 through V-87-02)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0.**

Mr. Mohr pointed out that he and his family are members of St. Elizabeth Ann Seton Parish, Item 40j and he would need to excuse himself from the vote. It was decided to move this Item to later in the agenda, when Mrs. Plavchak and/or Mr. Weinkauf might be able to join the Board.

39j. **Meridian @ 465 - Medical Office Building (V-88-02)**

Petitioner seeks approval of a Development Standards Variance of *Section 14.4.1: Maximum Height* in order to construct two (2) rooftop metal panel screen walls to a height of forty (40) feet. The site is located at 300 West 103<sup>rd</sup> Street. The site is zoned B-1/Business; B-3/Business; and B-6/Business.

Filed by Richard J. Kelly of EMH&T for Kite Construction.

Present for Petitioner: Paul Reis, 5013 Buckeye Court, Carmel, attorney for Kite Development; Mr. Kurt Faulkner of Kite Development; and Mr. Rich Kelly of EMH&T, Inc., the Engineer and Project Manager for this project. A 1998 variance approved the atrium feature of this building to extend to forty-six (46) feet. The new screening walls will be around the HV/AC on the south and north buildings to help reduce the sound that is reaching the neighborhood from this equipment. The sound issue is also being addressed in the ADLS approval process at the Plan Commission.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared and the public hearing was closed.

Department Report: Favorable consideration. John Molitor read the report stating favorable consideration conditioned upon Plan Commission approval of Docket No. 45-02 DP Amend/ADLS Amend.

Mrs. Rice moved to approve **Meridian @ 465 - Medical Office Building (V-88-02)** with the condition of Plan Commission approval. The motion was seconded by Mr. Dierckman and **APPROVED 3-0.**

40j. **St. Elizabeth Ann Seton Parish (SUA-91-02)**

This item moved to later in the agenda until arrival of Earlene Plavchak and Charles Weinkauff.

41j. ***Tabled to the July 22, 2002, meeting of the Board.***

**Burton Accessory Building (V-92-02)**

Petitioner seeks approval of a Developmental Standards Variance of *Section 25.1.1(B)(1): Maximum Height* in order to construct a 19' 10" accessory building.  
The site is located at 3227 East 136<sup>th</sup> Street. The site is zoned R-1/Residence.  
Filed by J. Scott Burton.

42-45j. ***Tabled pending Plan Commission approval of ADLS.***

**Meridian Mark III, Lot 1 (V-93-02; V-94-02; V-95-02; V-96-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-93-02</i>	<i>§25.7.01-4(l)</i>	Spring Hill Suites off-premise
<i>V-94-02</i>	<i>§25.7.02-11(c)</i>	28-square-foot Multi-tenant Building Complex Directory Sign
<i>V-95-02</i>	<i>§25.7.02-11(d)</i>	eight-foot (8') Multi-tenant Building Complex Directory Sign
<i>V-96-02</i>	<i>§25.7.02-11(e)</i>	<10' minimum setback

The site is located at 11895 North Meridian Street. The site is zoned B-6/Business within the US 31/Meridian Street Corridor Overlay Zone.

Filed by Michael W. Wells of REI Investments, Inc.

46-55j. **Carmel/Clay Schools - Woodbrook Elementary (V-97-02; V-98-02; V-99-02; V-100-02; V-101-02; V-102-02; V-103-02; V-104-02; V-105-02; V-106-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-97-02</i>	<i>§25.7.01-2</i>	15.84-square-foot traffic directional sign #1
<i>V-98-02</i>	<i>§25.7.01-2</i>	3' 10" traffic directional sign #1
<i>V-99-02</i>	<i>§25.7.01-2</i>	12.94-square-foot traffic directional sign #3
<i>V-100-02</i>	<i>§25.7.01-2</i>	4' 6" traffic directional sign #3
<i>V-101-02</i>	<i>§25.7.01-2</i>	10.84-square-foot traffic directional sign #5
<i>V-102-02</i>	<i>§25.7.01-2</i>	3.44-square-foot traffic directional sign #6
<i>V-103-02</i>	<i>§25.7.01-2</i>	3.44-square-foot traffic directional sign #7
<i>V-104-02</i>	<i>§25.7.02-5(b)</i>	two (2) Institutional signs (#2 & #5)
<i>V-105-02</i>	<i>§25.7.02-5(d)</i>	5' 7" Institutional sign height
<i>V-106-02</i>	<i>§25.7.02-5(e)</i>	four-foot (4') Institutional sign setback

The site is located at 4311 East 116<sup>th</sup> Street. The site is zoned S-2/Residence.

Filed by Chris Hinkle of Paul I. Cripe, Inc. for the Carmel/Clay School Corporation.

Present for Petitioner: Chris Hinkle, Paul I. Cripe, Inc., 7172 Graham Road, Indianapolis, IN 46240.  
These variances are for signs already in place.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared and the public hearing was closed.

Department Report: Favorable consideration. Laurence Lillig recommended suspending the Rules of Procedure in order to vote on Docket Nos. V-97-02 through V-103-02 (for Traffic Directional Signs) and Docket Nos. V-104-02 through V-106-02 (for Institutional Signs) simultaneously. Mr. Molitor recommended the same procedure for all the Carmel Clay School signs before the Board.

Mr. Dierckman moved to suspend the rules for schools' signs votes. The motion was seconded by Mrs. Rice and **APPROVED 3-0**.

Mr. Dierckman moved to approve **Carmel/Clay Schools - Woodbrook Elementary (V-97-02 through V-103-02)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0**.

Mr. Dierckman moved to approve **Carmel/Clay Schools - Woodbrook Elementary (V-104-02 through V-106-02)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0**.

**56-60j. Carmel/Clay Schools - Prairie Trace Elementary (V-107-02; V-108-02; V-109-02; V-110-02; V-111-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-107-02</i>	<i>§25.7.01-2</i>	15.89-square-foot traffic directional sign #1
<i>V-108-02</i>	<i>§25.7.01-2</i>	4' 10½" traffic directional sign #1
<i>V-109-02</i>	<i>§25.7.01-2</i>	20.19-square-foot traffic directional sign #3
<i>V-110-02</i>	<i>§25.7.01-2</i>	4' 11½" traffic directional sign #3
<i>V-111-02</i>	<i>§25.7.02-5(c)(i)</i>	90-square-foot Institutional sign #2

The site is located at 14200 North River Road. The site is zoned S-1/Residence - Low Density. Filed by Chris Hinkle of Paul I. Cripe, Inc. for the Carmel/Clay School Corporation.

Present for Petitioner: Chris Hinkle, Paul I. Cripe, Inc., 7172 Graham Road, Indianapolis, IN 46240. These variances are for signs already in place.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared and the public hearing was closed.

Department Report: Favorable consideration.

Mrs. Rice moved to approve **Carmel/Clay Schools - Prairie Trace Elementary (V-107-02 through V-110-02)**. The motion was seconded by Mr. Dierckman and **APPROVED 3-0**.

Mrs. Rice moved to approve **Carmel/Clay Schools - Prairie Trace Elementary (V-111-02)**. The motion was seconded by Mr. Dierckman and **APPROVED 3-0**.

**61-68j. Carmel/Clay Schools - Mohawk Trails Elementary (V-112-02; V-113-02; V-114-02; V-115-02; V-116-02; V-117-02; V-118-02; V-119-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-112-02</i>	<i>§25.7.01-4(i)</i>	traffic directional sign #1, #3 & #4 in right-of-way
<i>V-113-02</i>	<i>§25.7.01-2</i>	4-square-foot traffic directional sign #1
<i>V-114-02</i>	<i>§25.7.01-2</i>	7' 4" traffic directional sign #1
<i>V-115-02</i>	<i>§25.7.01-2</i>	4-square-foot traffic directional sign #3

<i>V-116-02</i>	<i>§25.7.01-2</i>	7' 4" traffic directional sign #3
<i>V-117-02</i>	<i>§25.7.01-2</i>	4-square-foot traffic directional sign #4
<i>V-118-02</i>	<i>§25.7.01-2</i>	7' 4" traffic directional sign #4
<i>V-119-02</i>	<i>§25.7.02-5(c)(i)</i>	41.67-square-foot Institutional sign #2

The site is located at 4242 East 126<sup>th</sup> Street. The site is zoned R-1/Residence.  
Filed by Chris Hinkle of Paul I. Cripe, Inc. for the Carmel/Clay School Corporation.

Present for Petitioner: Chris Hinkle, Paul I. Cripe, Inc., 7172 Graham Road, Indianapolis, IN 46240.  
These variances are for signs already in place.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared and the public hearing was closed.

Department Report: Favorable consideration. Laurence Lillig gave the condition that the petitioner apply to and receive the approval of the Board of Public Works for Consent to Encroach for the Traffic Directional signs (V-112-02 through V-118-02) located within the East 126<sup>th</sup> Street right-of-way.

Mrs. Rice moved to approve with conditions recommended by the Department **Carmel/Clay Schools - Mohawk Trails Elementary (V-112-02 through V-118-02)**. The motion was seconded by Mr. Dierckman and **APPROVED 3-0**.

Mr. Dierckman to approve **Carmel/Clay Schools - Mohawk Trails Elementary (V-119-02)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0**.

69-72j. **Carmel/Clay Schools - College Wood Elementary (V-120-02; V-121-02; V-122-02; V-123-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-120-02</i>	<i>§25.7.01-2</i>	8-square-foot traffic directional sign #1
<i>V-121-02</i>	<i>§25.7.01-2</i>	4' 6" traffic directional sign #1
<i>V-122-02</i>	<i>§25.7.02-5(b)</i>	two (2) Institutional signs (#2 & #3)
<i>V-123-02</i>	<i>§25.7.02-5(c)(i)</i>	55.5-square-foot Institutional sign #2

The site is located at 400 South Guilford Road. The site is zoned R-1/Residence.  
Filed by Chris Hinkle of Paul I. Cripe, Inc. for the Carmel/Clay School Corporation.

Present for Petitioner: Chris Hinkle, Paul I. Cripe, Inc., 7172 Graham Road, Indianapolis, IN 46240.  
These variances are for signs already in place.

Remonstrance:

Craig Jones, 401 S. Guilford Road, asked if traffic directional signs are by the school building and would the window sign by the road remain the same. Chris Hinkle replied the signs would all remain the same. Mr. Jones had no objections.

Public Hearing was closed.

Department Report: Favorable consideration.

Mrs. Rice moved to approve **Carmel/Clay Schools - College Wood Elementary (V-120-02 and V-121-02)**. The motion was seconded by Mr. Dierckman and **APPROVED 3-0**.

Mr. Dierckman moved to approve **Carmel/Clay Schools - College Wood Elementary (V-122-02 and V-123-02;)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0.**

73-79j. **Carmel/Clay Schools - Smoky Row Elementary (V-124-02; V-125-02; V-126-02; V-127-02; V-128-02; V-129-02; V-130-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-124-02</i>	§25.7.01-2	17.17-square-foot traffic directional sign #1
<i>V-125-02</i>	§25.7.01-2	3' 6" traffic directional sign #1
<i>V-126-02</i>	§25.7.01-2	14.14-square-foot traffic directional sign #2
<i>V-127-02</i>	§25.7.01-2	4' 1½" traffic directional sign #2
<i>V-128-02</i>	§25.7.01-2	4.07-square-foot traffic directional sign #3
<i>V-129-02</i>	§25.7.01-2	4.07-square-foot traffic directional sign #4
<i>V-130-02</i>	§25.7.02-5(c)(i)	16.81-square-foot traffic directional sign #5

The site is located at 4242 East 126<sup>th</sup> Street. The site is zoned R-1/Residence.

Filed by Chris Hinkle of Paul I. Cripe, Inc. for the Carmel/Clay School Corporation.

Present for Petitioner: Chris Hinkle, Paul I. Cripe, Inc., 7172 Graham Road, Indianapolis, IN 46240. These variances are for signs already in place.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared and the public hearing was closed.

Department Report: Favorable consideration. Laurence Lillig stated V-130-02 should refer to §25.7.01-2 instead of §25.7.02-5(c)(i).

Mrs. Rice moved to approve with correction **Carmel/Clay Schools - Smoky Row Elementary (V-124-02 through V-130-02)**. The motion was seconded by Mr. Dierckman and **APPROVED 3-0.**

Five minute break.

80-86j. **Old National Bank (V-133-02; V-134-02; V-135-02; V-136-02; V-137-02; V-138-02; V-139-02)**

Petitioner seeks approval of the following Developmental Standards Variances:

<i>V-133-02</i>	§14.4.2(2)	setback from South Range Line Road
<i>V-134-02</i>	§14.4.2(2)	setback from proposed right-of-way of East 116 <sup>th</sup> Street
<i>V-135-02</i>	§26.4.5	zero-foot (0') landscape bufferyard along South Range Line Road
<i>V-136-02</i>	§26.4.5	zero-foot (0') landscape bufferyard along East 116 <sup>th</sup> Street
<i>V-137-02</i>	§25.7.02-8(c)	76.5-square-foot wall identification sign
<i>V-138-02</i>	§25.7.02-8(e)	three-foot (3') ground sign setback from South Range Line Road; two-foot (2') ground sign setback from proposed right-of-way of East 116 <sup>th</sup> Street
<i>V-139-02</i>		lighting in excess of 0.3 footcandle at South Range Line Road right-of-way and proposed right-of-way of East 116 <sup>th</sup> Street

The site is located on the southeast corner of City Center Drive and South Range Line Road. The site is zoned B-7/Business.

Filed by Charles D. Frankenberger of Nelson & Frankenberger for Old National Bank.

Present for Petitioner: Charlie Frankenberger, 5212 Carrington Circle, Carmel; Dan Doan, President of the Indianapolis District of the Old National Bank; and Alan Armstrong, Project Manager. The project will redevelop the existing Walden Bookstore on the northwest corner of 116<sup>th</sup> Street and South Range Line Road. The redevelopment will completely change the exterior of the existing building through a

variety of high quality construction materials. The project is awaiting Developmental Plan approval by the Plan Commission and ADLS approval from the Special Studies Committee. The Special Studies Committee has already reviewed and approved landscaping and signage, but it is in the process of continuing its review of the proposed building. The variances before this Board are for setbacks, bufferyards, signage and lighting. The footprint of the building will not be altered other than adding an ATM drive through. These variances are not necessitated by the expansion of the building, but result from measuring the site in accordance with current guidelines and proposed right-of-way widths. If the bufferyards were imposed, it would compress the site, eliminating parking.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared and the public hearing was closed.

Department Report: Favorable consideration. The landscape plans and signage plans did receive approval from the Plan Commission. There is currently a separate Development Plan Amendment that is being considered by the Special Studies Committee that does not affect these variance petitions. Approval is recommended with the condition that the landscape plan in the right-of-way for South Range Line Road be brought to the Board of Public Works for Consent to Encroach approval. The second condition with respect to the lighting, the intensity of the lighting be limited to that which is illustrated in the packet. The Department is recommending favorable consideration of the signs as approved by the Special Study Committee.

Mrs. Rice moved to approve **Old National Bank (V-133-02 and V-134-02)**. The motion was seconded by Mr. Dierckman and **APPROVED 3-0**.

Mr. Dierckman moved to approve **Old National Bank (V-135-02 with condition and V-136-02)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0**.

Mr. Dierckman moved to approve **Old National Bank (V-137-02)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0**.

Mr. Dierckman moved to approve **Old National Bank (V-138-02)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0**.

Mr. Dierckman moved to approve with condition **Old National Bank (V-139-02)**. The motion was seconded by Mrs. Rice and **APPROVED 3-0**.

Earlene Plavchak and Charles Weinkauff joined the Board.

40j. **St. Elizabeth Ann Seton Parish (SUA-91-02)**

Petitioner seeks approval of a Special Use Amendment under *Section 5.2* in order to establish a rectory.

The site is located at 10655 Haverstick Road. The site is zoned S-1/Residence - Low Density.

Filed by Charles D. Frankenberger of Nelson & Frankenberger for St. Elizabeth Ann Seton Parish.

Mr. Mohr recused himself. His family is a member of St. Elizabeth Ann Seton. Mrs. Rice assumed responsibility of President of the Board.



Present for Petitioner: Charlie Frankenberger, 5212 Carrington Circle, Carmel, Father Ted Rothrock and Clare Magna from St. Elizabeth Seton, and the architect, Michael Grove. Rectory will be a residence for the priests. An area of trees will be cleared for the residence. This site plan was revised to shift the church further south, approximately thirty to forty feet to provide greater distance from adjacent residences and greater tree insulation. The TAC did not review this site plan, but the one showing the rectory further north with less distance from Carolina Commons. The new plans will be confirmed with TAC and any additional recommendations will be incorporated. Due to the slope of the grade, the drive has been revised to come in from the side at an angle. Some revisions from what was in brochures were made for improvements. In addition to preservation of trees between the rectory and Carolina Commons, trees will be planted for Mr. Stephen Becker. A copy of the letter to Mr. Becker and revisions to the plans were given to Laurence Lillig for the record.

Members of the public were invited to speak in favor or opposition to the petition; no one appeared and the public hearing was closed.

Department Report: Favorable consideration with the following conditions: the revised site plan go before the Technical Advisory Committee at the July 17, 2002, meeting; approval of Docket No. SUA-91-02 be subject to the satisfactory resolution of all TAC concerns; and the dedication of right-of-way for Haverstick Road and East 106<sup>th</sup> Street be completed prior to the issuance of a building permit for this project.

Mr. Dierckman moved to approve with conditions **St. Elizabeth Ann Seton Parish (SUA-91-02)**. The motion was seconded by Mrs. Plavchak and **APPROVED 4-0**.

Mr. Mohr rejoined the Board and assumed the responsibility of President.

Laurence Lillig announced the first Hearing Officer Hearing would be July 11, 2002, at 1:00 PM, with two items on the agenda. Mr. Weinkauff was asked to be the Hearing Officer. Mr. Weinkauff will be unable to attend. Mrs. Rice was then asked. She will check her calendar and call the Department.

## **K. Old Business.**

### **1k. WTF - Sprint Spectrum (A-97-01)**

Appellant (an Interested Party) wishes to appeal the decision of the Director regarding the collocation of a WTF antenna on an existing private radio tower.

The site is located at 1388 Queen's Way. The site is zoned S-1/Residence – Very Low Density.

Filed by J. Taggart Birge of Bose McKinney & Evans for Richard Deer.

Present for the Petitioner: Taggart Birge an attorney with offices at 600 East 96<sup>th</sup> Street; Richard Deer; Mike Walsh representing Nancy Irsay; Mr. Flannigan, President of Queen's Way Homeowners Association; Steve Hilbert and other interested neighbors in the area; Phil Nicely, attorney with Bose McKinney & Evans; and Steve Granner, Planner with Bose McKinney & Evans.

Mr. Birge repeated the procedural history that was presented at the June 6, 2002, BZA meeting. At that meeting Mr. Birge appeared before this Board to present the rationale for requiring a Public Hearing on this matter before Sprint was entitled to pull a permit for this project. This Board voted 2-1 that Sprint should be required to come before this body before a permit could be issued. June 13 2002, the Hamilton County Circuit Court heard Sprint's appeal regarding the BZA's decision that their lawsuit was untimely filed.

The purpose tonight is to review the merits of the appeal filed August 15, 2001, and determine if Sprint should have first been required to come before this body before the Director issued a permit. The subject property is in S-1 zoning. All homes are residential in nature without commercial intrusion. The purpose of the S-1 zoning district is to provide for the development of innovative residential environments in keeping with the rural character of the area. The Sprint commercial site is not in keeping with the S-1 district. Sprint is basing the collocation of the antenna on Section 5.1.1 of the Zoning Ordinance that states, "Antenna if collated on an improved or existing tower is a permitted use." By definition there is no antenna on that tower on which Sprint can collate. The term does not include an amateur radio station antenna. By definition the antenna that currently exists on that tower is not an antenna. The applicable section of the ordinance is Section 5.2, which sets forth the Special Use requirements: antenna on or within a structure other than a tower must come before BZA to obtain Special Use approval. Once this antenna is constructed, any future antenna will not need to come before this body to collate on the tower.

Tower site pictures were distributed

A 130-foot tower is now on site. Section 5.3.7 permits private radio and television reception and transmitting towers and antennas. Today that tower, which was built in 1987, would not be allowed. It is a non-conforming use; it is grand fathered. Effective July 1997, any tower over fifteen feet in a residential area must obtain Special Exception prior to its construction. Section 25.13.4 states any tower in existence may continue as Nonconforming so long as the use is not substantially altered and not increased. Sprint's commercial use will substantially alter the use. This should not be allowed without a public review. The existence of the tower is governed by the Amateur Radio Federal Regulations. Section 47, under Section 97.113 states no amateur station shall transmit communications specifically prohibited elsewhere in this part, communications for hire or material compensation either direct or indirect, paid or promised, communications in which the station licensee or control operator has a pecuniary interest. A copy of the lease was submitted showing the material compensation Mr. Zamber will be awarded if this site goes forward. Sprint should be required to go through the Public Review process for Special Use. The Sprint building is not an accessory use to the individual single-family residence.

Remonstrance:

Mike Walsh, attorney for Nancy Irsay, office at 11350 N. Meridian Suite #420 Carmel and residence at 10629 Walnut Creek Drive. Mrs. Irsay's address is 1303 W. 116<sup>th</sup> St., Carmel. Mrs. Irsay's house looks directly at the currently existing tower. If the antenna blows over it could hit her property and it is unsightly. She does not think the conversion to commercial purpose is proper and it should follow the correct procedure. She urges the Board to vote in favor of Mr. Deer's petition. Sprint approached Mrs. Irsay a couple of years ago. After visiting the City, it was determined the location would not be in the best interest of the neighborhood. Crooked Stick Golf Club has been approached for a proposed cell phone tower on the practice facility. It would be tucked away and there is only one house in that area. That would be a much better location.

John Flannigan, 11100 Queen's Way Circle, President of Queen's Manor Neighborhood Association and was representing their views. If the Ordinance requires location on existing towers before building new towers, then the Zamber/Sprint tower would grow to accommodate other cell companies, including the one for Crooked Stick. It would no longer be a modified amateur tower, but rather a large commercial tower. This would degrade value in the neighborhood. He urged a full Public Hearing so the commercial and the financial aspects are fully disclosed and the status of the Crooked Stick tower determined.

Opposition:

Richard Nickovich, 333 W. Wacker Drive, Chicago, IL; Thomas Bedsole, Locke Reynolds Law Firm, Indianapolis; and John Buchert, Sight Development Director for Sprint Spectrum for the Indianapolis market. Tonight is whether or not Sprint's facility is a Permitted Use.

John Buchert, 5600 N. River Road, Rosemont, IL 60018, Sight Building Manager with Sprint for three years. The existing tower is a 135-foot guide tower used as an amateur ham radio tower. It transmits and receives radio signals. Currently there are three 40-foot apertures on the tower. The Sprint improvements include the addition of a brick shelter to house the radio equipment, a 12-foot wide asphalt access road with a turnaround and some additional landscaping. The new antennas are one foot in width and six feet in height. The large ones will be removed. The site will not be manned. A structural engineering firm has confirmed the existing antenna mast is of sufficient structural integrity to support not only the current antenna, but also the addition of Sprint's flush-mounted antenna. There will be no additional lighting.

Mr. Nickovich stated what is being added is the sort of thing the Ordinance encourages, collocating on an existing tower. Sprint's antenna facility is a Permitted Use under Section 5.1.1 with the S-1 Zoning District. In the Ordinance, tower does not specify antenna tower to collocate. There need not be other antenna to collocate. Section 5.2 speaks about the location of antenna on a structure other than a tower and has no relevance. Section 5.3.7 is also not relevant. The governing language is Section 5.1.1. The language in Section 25.13.4 states any tower or radio or television transmission antenna in existence may continue to exist as a nonconforming use. The tower may be repaired, reconstructed, replaced or maintained without a Use Variance or Special Use or Special Exception approval so long as the use is not substantially altered and the height is not changed. Under the rules, the Section 47 CFR 97.113 argument should have been submitted and made available to Sprint seven days in advance and they were not. Sprint is not illegal under FCC and CFR regulations. It is not a relevant inquiry whether somebody is making money. It is a relevant inquiry whether something is a Permitted Use under the Ordinance. The Building Permit was properly issued and we urge denial of Mr. Deer's appeal.

Rebuttal:

Mr. Birge stated the issue is whether use is substantially altered. The Federal regulations prevent financial and material compensation to the ham radio site. It is transference from a private use to a commercial use for significant compensation. This site will transmit thousand of calls for commercial purpose. According to Section 5.2 this is not a tower to collocate on and is not a Permitted Use. Sprint needs to come before this Board for a permit.

Department Report: Laurence Lillig reviewed the S-1 Zoning Ordinance. The tower at 1388 Queen's Way is an existing tower and does not, therefore, require either Special Exception or Special Use approval prior to the collocation of an antenna with the tower. The Department holds that the use has not been substantially altered, the user has. The Department recommends that the Board uphold the Director's initial determination regarding the issuance of the permit. Federal law is not what BZA is here to consider, that is a court matter.

Mr. Molitor stated the issue is whether the land use is being substantially altered.

Mr. Mohr asked how the Department viewed substantially altered when going from private to public use.

Mr. Molitor stated the Ordinance was written to provide a preference for existing towers. It did not distinguish between private towers and public utility towers. It was assumed if the tower existed, it has a legal right to be there. The only way it would not continue to have a legal right to be there is if this Board determines adding this particular antenna substantially alters the use.

Mr. Weinkauff asked if the tower is currently being used as a ham radio tower.

Mr. Buchert replied that Mr. Zamber does still utilize the tower as a ham radio and if the existing apertures are removed he will need to replace them with a single antenna that would allow him to have his communications. As the site was permitted, the existing apertures will remain.

Mrs. Plavchak asked if the utility building at the base of the tower and the 12-foot access road are visible from any of the adjacent properties.

Mr. Nickovich stated it might be possible to see parts of the equipment shelter. The landscaping will provide a shield and the structure blends with the existing structures.

Mrs. Plavchak asked if the next owner of this property would be required to remove the tower or would it be allowed to stay, even if it was no longer in use.

Mr. Molitor stated if the tower is abandoned for six months then the owner is required to remove the tower. If the new owner were a ham radio enthusiast, the tower would remain approved.

Mrs. Plavchak asked if a church steeple would need Special Use approval to attach an antenna.

Mr. Molitor said it would be necessary because it is something other than a tower and it would need to be verified that it was properly camouflaged to prevent the proliferation of towers.

Re-opened Public Hearing:

Jean Atkins, 1151 W. 116<sup>th</sup> St. felt very strongly that one person gets rich while every other neighbor finds this reprehensible. There is not a person in this room who would want this in their neighborhood. One Sprint representative stated the large apertures would be removed and the other representative stated that is not included in the permit. They could move the tower a mile down the road and would not be offensive to anyone.

Public Hearing closed.

Mr. Weinkauff stated the present tower might be there for a very long time. He felt the use of this property within the S-1 will be substantially altered, not just the tower but the road and accessory building. Sprint needs to come before this Board if they wish to petition for a Variance

Mr. Dierckman suggested that Sprint be given the opportunity to rebuttal the last comments from Mrs. Atkins.

Rebuttal:

Mr. Nickovich stated Sprint would be willing to remove the large mast antennas as part of construction.

Mrs. Rice asked Mr. Nickovich about the FCC conditions and rights to transfer the license.

Mr. Nickovich stated the license is issued to Sprint for PCS (person communication services) and Sprint will not assign its rights to a third party.

Mrs. Rice asked if the owner of a ham radio has the same rights.

Mr. Nickovich stated they are separate regulated operations and are not subject to the same regulations. Under the FCC, ham radios are exempted from local zoning regulations. This will be a single tower with two distinct uses. Mr. Zamber will not be utilizing Sprint's license for a personal communication network. He will continue to operate a ham radio.

Mrs. Rice felt the Sprint remonstrance convoluted the meaning of the language to fit its own purpose.

Mr. Dierckman would like a copy of Dr. Zamber's ham radio permit.

Mr. Molitor stated that last fall it was verified that Dr. Zamber had a valid permit. They are valid for ten years. Copy is not in the Zoning file, but may be Mr. Molitor or Mr. Haney's file.

Mr. Mohr asked if Sprint collocates on this tower and decides in the future that the tower is not sufficient, can they build something else and what steps would be needed?

Laurence Lillig stated the tower is separate from the antenna. The tower is Nonconforming Use under Chapter 25 and that would allow the tower to be replaced and not necessarily with an identical structure and would only require a building permit.

Discussion followed of Dr. Zamber's license. It was originally issued in 1987 and can be renewed every ten years indefinitely.

Mr. Dierckman wondered if Dr. Zamber still uses it as a ham radio tower.

Mr. Molitor stated there was no evidence either way or no basis for making a decision on that point. If it is a critical issue, the matter could be continued.

Mr. Dierckman stated it is not critical. It could go away if not used. He felt this would be a substantial change.

Mr. Mohr stated going from residential to commercial is a substantial change of use.

Mr. Weinkauff moved approve **WTF - Sprint Spectrum (A-97-01)**. The motion was seconded by Mr. Dierckman and **APPROVED 5-0**.

## **L.     New Business.**

1L.     Board to consider amendments to the Board of Zoning Appeals Rules of Procedure.

Mr. Molitor distributed copies of the Rules of Procedure and pointed out and discussed the changes that were made at last month's meeting.

The amendments as presented were **APPROVED 5-0**.

## **M.     Adjourn.**

Mr. Weinkauff moved to adjourn. The motion was seconded by Mrs. Plavchak and **APPROVED 5-0**.

Meeting adjourned at 10:30 PM.

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Michael Mohr, President

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Connie Tingley, Secretary